

**ASSEMBLY BILL**

**No. 2858**

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**Introduced by Assembly Members Leno and Yee**

February 24, 2006

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An act to amend Section 1370 of the Penal Code, relating to competency.

LEGISLATIVE COUNSEL'S DIGEST

AB 2858, as introduced, Leno. Trials: mental competence: defendant.

Existing law requires a that defendant be committed to a state hospital when he or she is found incompetent to stand trial. Existing law also requires that if the defendant has not regained competency after 3 years or the maximum term of imprisonment provided by law for the most serious charged offense, whichever is shorter, he or she will be returned to the committing court.

This bill would require the defendant to be returned to the committing court when there has been a reasonable amount of time to determine if the defendant will ever regain mental competence based on consideration of specified factors.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1370 of the Penal Code is amended to
- 2 read:
- 3 1370. (a) (1) (A) If the defendant is found mentally
- 4 competent, the criminal process shall resume, the trial on the
- 5 offense charged shall proceed, and judgment may be pronounced.

1 (B) If the defendant is found mentally incompetent, the trial or  
2 judgment shall be suspended until the person becomes mentally  
3 competent.

4 (i) In the meantime, the court shall order that the mentally  
5 incompetent defendant be delivered by the sheriff to a state  
6 hospital for the care and treatment of the mentally disordered, or  
7 to any other available public or private treatment facility  
8 approved by the community program director that will promote  
9 the defendant's speedy restoration to mental competence, or  
10 placed on outpatient status as specified in Section 1600.

11 (ii) However, if the action against the defendant who has been  
12 found mentally incompetent is on a complaint charging a felony  
13 offense specified in Section 290, the prosecutor shall determine  
14 whether the defendant previously has been found mentally  
15 incompetent to stand trial pursuant to this chapter on a charge of  
16 a Section 290 offense, or whether the defendant is currently the  
17 subject of a pending Section 1368 proceeding arising out of a  
18 charge of a Section 290 offense. If either determination is made,  
19 the prosecutor shall so notify the court and defendant in writing.  
20 After this notification, and opportunity for hearing, the court  
21 shall order that the defendant be delivered by the sheriff to a state  
22 hospital or other secure treatment facility for the care and  
23 treatment of the mentally disordered unless the court makes  
24 specific findings on the record that an alternative placement  
25 would provide more appropriate treatment for the defendant and  
26 would not pose a danger to the health and safety of others.

27 (iii) If the action against the defendant who has been found  
28 mentally incompetent is on a complaint charging a felony offense  
29 specified in Section 290 and the defendant has been denied bail  
30 pursuant to subdivision (b) of Section 12 of Article I of the  
31 California Constitution because the court has found, based upon  
32 clear and convincing evidence, a substantial likelihood that the  
33 person's release would result in great bodily harm to others, the  
34 court shall order that the defendant be delivered by the sheriff to  
35 a state hospital for the care and treatment of the mentally  
36 disordered unless the court makes specific findings on the record  
37 that an alternative placement would provide more appropriate  
38 treatment for the defendant and would not pose a danger to the  
39 health and safety of others.

1 (iv) The clerk of the court shall notify the Department of  
2 Justice in writing of any finding of mental incompetence with  
3 respect to a defendant who is subject to clause (ii) or (iii) for  
4 inclusion in his or her state summary criminal history  
5 information.

6 (C) Upon the filing of a certificate of restoration to  
7 competence, the court shall order that the defendant be returned  
8 to court in accordance with Section 1372. The court shall  
9 transmit a copy of its order to the community program director or  
10 a designee.

11 (D) A defendant charged with a violent felony may not be  
12 delivered to a state hospital or treatment facility pursuant to this  
13 subdivision unless the state hospital or treatment facility has a  
14 secured perimeter or a locked and controlled treatment facility,  
15 and the judge determines that the public safety will be protected.

16 (E) For purposes of this paragraph, “violent felony” means an  
17 offense specified in subdivision (c) of Section 667.5.

18 (F) A defendant charged with a violent felony may be placed  
19 on outpatient status, as specified in Section 1600, only if the  
20 court finds that the placement will not pose a danger to the health  
21 or safety of others.

22 (2) Prior to making the order directing that the defendant be  
23 confined in a state hospital or other treatment facility or placed  
24 on outpatient status, the court shall proceed as follows:

25 (A) The court shall order the community program director or a  
26 designee to evaluate the defendant and to submit to the court  
27 within 15 judicial days of the order a written recommendation as  
28 to whether the defendant should be required to undergo  
29 outpatient treatment, or committed to a state hospital or to any  
30 other treatment facility. No person shall be admitted to a state  
31 hospital or other treatment facility or placed on outpatient status  
32 under this section without having been evaluated by the  
33 community program director or a designee.

34 (B) The court shall hear and determine whether the defendant,  
35 with advice of his or her counsel, consents to the administration  
36 of antipsychotic medication, and shall proceed as follows:

37 (i) If the defendant, with advice of his or her counsel,  
38 consents, the court order of commitment shall include  
39 confirmation that antipsychotic medication may be given to the  
40 defendant as prescribed by a treating psychiatrist pursuant to the

1 defendant's consent. The commitment order shall also indicate  
2 that, if the defendant withdraws consent for antipsychotic  
3 medication, after the treating psychiatrist complies with the  
4 provisions of subparagraph (C), the defendant shall be returned  
5 to court for a hearing in accordance with this subdivision  
6 regarding whether antipsychotic medication shall be  
7 administered involuntarily.

8 (ii) If the defendant does not consent to the administration of  
9 medication, the court shall hear and determine whether any of the  
10 following is true:

11 (I) The defendant lacks capacity to make decisions regarding  
12 antipsychotic medication, the defendant's mental disorder  
13 requires medical treatment with antipsychotic medication, and, if  
14 the defendant's mental disorder is not treated with antipsychotic  
15 medication, it is probable that serious harm to the physical or  
16 mental health of the patient will result. Probability of serious  
17 harm to the physical or mental health of the defendant requires  
18 evidence that the defendant is presently suffering adverse effects  
19 to his or her physical or mental health, or the defendant has  
20 previously suffered these effects as a result of a mental disorder  
21 and his or her condition is substantially deteriorating. The fact  
22 that a defendant has a diagnosis of a mental disorder does not  
23 alone establish probability of serious harm to the physical or  
24 mental health of the defendant.

25 (II) The defendant is a danger to others, in that the defendant  
26 has inflicted, attempted to inflict, or made a serious threat of  
27 inflicting substantial physical harm on another while in custody,  
28 or the defendant had inflicted, attempted to inflict, or made a  
29 serious threat of inflicting substantial physical harm on another  
30 that resulted in his or her being taken into custody, and the  
31 defendant presents, as a result of mental disorder or mental  
32 defect, a demonstrated danger of inflicting substantial physical  
33 harm on others. Demonstrated danger may be based on an  
34 assessment of the defendant's present mental condition,  
35 including a consideration of past behavior of the defendant  
36 within six years prior to the time the defendant last attempted to  
37 inflict, inflicted, or threatened to inflict substantial physical harm  
38 on another, and other relevant evidence.

39 (III) The people have charged the defendant with a serious  
40 crime against the person or property; involuntary administration

1 of antipsychotic medication is substantially likely to render the  
2 defendant competent to stand trial; the medication is unlikely to  
3 have side effects that interfere with the defendant's ability to  
4 understand the nature of the criminal proceedings or to assist  
5 counsel in the conduct of a defense in a reasonable manner; less  
6 intrusive treatments are unlikely to have substantially the same  
7 results; and antipsychotic medication is in the patient's best  
8 medical interest in light of his or her medical condition.

9 (iii) If the court finds any of the conditions described in clause  
10 (ii) to be true, the court shall issue an order authorizing the  
11 treatment facility to involuntarily administer antipsychotic  
12 medication to the defendant when and as prescribed by the  
13 defendant's treating psychiatrist. The court shall not order  
14 involuntary administration of psychotropic medication under  
15 subclause (III) of clause (ii) unless the court has first found that  
16 the defendant does not meet the criteria for involuntary  
17 administration of psychotropic medication under subclause (I) of  
18 clause (ii) and does not meet the criteria under subclause (II) of  
19 clause (ii).

20 (iv) In all cases, the treating hospital, facility or program may  
21 administer medically appropriate antipsychotic medication  
22 prescribed by a psychiatrist in an emergency as described in  
23 subdivision (m) of Section 5008 of the Welfare and Institutions  
24 Code.

25 (v) Any report made pursuant to paragraph (1) of subdivision  
26 (b) shall include a description of any antipsychotic medication  
27 administered to the defendant and its effects and side effects,  
28 including effects on the defendant's appearance or behavior that  
29 would affect the defendant's ability to understand the nature of  
30 the criminal proceedings or to assist counsel in the conduct of a  
31 defense in a reasonable manner. During the time the defendant is  
32 confined in a state hospital or other treatment facility or placed  
33 on outpatient status, either the defendant or the people may  
34 request that the court review any order made pursuant to this  
35 subdivision. The defendant, to the same extent enjoyed by other  
36 patients in the state hospital or other treatment facility, shall have  
37 the right to contact the Patients' Rights Advocate regarding his or  
38 her rights under this section.

39 (C) If the defendant consented to antipsychotic medication as  
40 described in clause (i) of subparagraph (B), but subsequently

1 withdraws his or her consent, or, if involuntary antipsychotic  
2 medication was not ordered pursuant to clause (ii) of  
3 subparagraph (B), and the treating psychiatrist determines that  
4 antipsychotic medication has become medically necessary and  
5 appropriate, the treating psychiatrist shall make efforts to obtain  
6 informed consent from the defendant for antipsychotic  
7 medication. If informed consent is not obtained from the  
8 defendant, and the treating psychiatrist is of the opinion that the  
9 defendant lacks capacity to make decisions regarding  
10 antipsychotic medication as specified in subclause (I) of clause  
11 (ii) of subparagraph (B), or that the defendant is a danger to  
12 others as specified in subclause (II) of clause (ii) of subparagraph  
13 (B), the committing court shall be notified of this, including an  
14 assessment of the current mental status of the defendant and the  
15 opinion of the treating psychiatrist that involuntary antipsychotic  
16 medication has become medically necessary and appropriate. The  
17 court shall provide notice to the prosecuting attorney and to the  
18 attorney representing the defendant and shall set a hearing to  
19 determine whether involuntary antipsychotic medication should  
20 be ordered in the manner described in subparagraph (B).

21 (3) When the court orders that the defendant be confined in a  
22 state hospital or other public or private treatment facility, the  
23 court shall provide copies of the following documents which  
24 shall be taken with the defendant to the state hospital or other  
25 treatment facility where the defendant is to be confined:

26 (A) The commitment order, including a specification of the  
27 charges.

28 (B) A computation or statement setting forth the maximum  
29 term of commitment in accordance with subdivision (c).

30 (C) A computation or statement setting forth the amount of  
31 credit for time served, if any, to be deducted from the maximum  
32 term of commitment.

33 (D) State summary criminal history information.

34 (E) Any arrest reports prepared by the police department or  
35 other law enforcement agency.

36 (F) Any court-ordered psychiatric examination or evaluation  
37 reports.

38 (G) The community program director's placement  
39 recommendation report.

1 (H) Records of any finding of mental incompetence pursuant  
2 to this chapter arising out of a complaint charging a felony  
3 offense specified in Section 290 or any pending Section 1368  
4 proceeding arising out of a charge of a Section 290 offense.

5 (4) When the defendant is committed to a treatment facility  
6 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the  
7 court makes the findings specified in clause (ii) or (iii) of  
8 subparagraph (B) of paragraph (1) to assign the defendant to a  
9 treatment facility other than a state hospital or other secure  
10 treatment facility, the court shall order that notice be given to the  
11 appropriate law enforcement agency or agencies having local  
12 jurisdiction at the site of the placement facility of any finding of  
13 mental incompetence pursuant to this chapter arising out of a  
14 charge of a Section 290 offense.

15 (5) When directing that the defendant be confined in a state  
16 hospital pursuant to this subdivision, the court shall select the  
17 hospital in accordance with the policies established by the State  
18 Department of Mental Health.

19 (6) (A) If the defendant is committed or transferred to a state  
20 hospital pursuant to this section, the court may, upon receiving  
21 the written recommendation of the medical director of the state  
22 hospital and the community program director that the defendant  
23 be transferred to a public or private treatment facility approved  
24 by the community program director, order the defendant  
25 transferred to that facility. If the defendant is committed or  
26 transferred to a public or private treatment facility approved by  
27 the community program director, the court may, upon receiving  
28 the written recommendation of the community program director,  
29 transfer the defendant to a state hospital or to another public or  
30 private treatment facility approved by the community program  
31 director. In the event of dismissal of the criminal charges before  
32 the defendant recovers competence, the person shall be subject to  
33 the applicable provisions of the Lanterman-Petris-Short Act (Part  
34 1 (commencing with Section 5000) of Division 5 of the Welfare  
35 and Institutions Code). Where either the defendant or the  
36 prosecutor chooses to contest either kind of order of transfer, a  
37 petition may be filed in the court for a hearing, which shall be  
38 held if the court determines that sufficient grounds exist. At the  
39 hearing, the prosecuting attorney or the defendant may present  
40 evidence bearing on the order of transfer. The court shall use the

1 same standards as are used in conducting probation revocation  
2 hearings pursuant to Section 1203.2.

3 Prior to making an order for transfer under this section, the  
4 court shall notify the defendant, the attorney of record for the  
5 defendant, the prosecuting attorney, and the community program  
6 director or a designee.

7 (B) If the defendant is initially committed to a state hospital or  
8 secure treatment facility pursuant to clause (ii) or (iii) of  
9 subparagraph (B) of paragraph (1) and is subsequently  
10 transferred to any other facility, copies of the documents  
11 specified in paragraph (3) shall be taken with the defendant to  
12 each subsequent facility to which the defendant is transferred.  
13 The transferring facility shall also notify the appropriate law  
14 enforcement agency or agencies having local jurisdiction at the  
15 site of the new facility that the defendant is a person subject to  
16 clause (ii) or (iii) of subparagraph (B) of paragraph (1).

17 (b) (1) ~~Within~~ *Where the defendant is on inpatient status and*  
18 *has not regained mental competence within 90 days of a*  
19 *commitment made pursuant to subdivision (a), the medical*  
20 *director of the state hospital or other treatment facility to which*  
21 *the defendant is confined shall make a written report to the court*  
22 *and the community program director for the county or region of*  
23 *commitment, or a designee, concerning the defendant's progress*  
24 *toward recovery of mental competence.* ~~Where the defendant is~~  
25 ~~on outpatient status, the outpatient treatment staff shall make a~~  
26 ~~written report to the community program director concerning the~~  
27 ~~defendant's progress toward recovery of mental competence.~~  
28 ~~Within 90 days of placement on outpatient status, the community~~  
29 ~~program director shall report to the court on this matter. If the~~  
30 ~~defendant has not recovered mental competence, but the report~~  
31 ~~discloses a substantial likelihood that the defendant will regain~~  
32 ~~mental competence in the foreseeable future, the defendant shall~~  
33 ~~remain in the state hospital or other treatment facility or on~~  
34 ~~outpatient status. Thereafter, at six-month intervals or until the~~  
35 ~~defendant becomes mentally competent, where the defendant is~~  
36 ~~confined in a treatment facility, the medical director of the~~  
37 ~~hospital or person in charge of the facility shall report in writing~~  
38 ~~to the court and the community program director or a designee~~  
39 ~~regarding the defendant's progress toward recovery of mental~~  
40 ~~competence. Where the defendant is on outpatient status, after~~

1 the initial 90-day report, the outpatient treatment staff shall report  
2 to the community program director on the defendant's progress  
3 toward recovery, and the community program director shall  
4 report to the court on this matter at six-month intervals. A copy  
5 of these reports shall be provided to the prosecutor and defense  
6 counsel by the court. If the report indicates that there is no  
7 substantial likelihood that the defendant will regain mental  
8 competence in the foreseeable future, the committing court shall  
9 order the defendant to be returned to the court for proceedings  
10 pursuant to paragraph (2) of subdivision (c). The court shall  
11 transmit a copy of its order to the community program director or  
12 a designee.

13 (2) *Where the defendant is on outpatient status, and has not*  
14 *regained mental competence within 90 days of placement on the*  
15 *outpatient status pursuant to subdivision (a), the outpatient*  
16 *treatment staff shall make a written report to the court and the*  
17 *community program director for the county or region of*  
18 *commitment, or a designee, concerning the defendant's progress*  
19 *toward recovery of mental competence.*

20 (3) *If the report submitted to the court pursuant to paragraph*  
21 *(1) or (2) of this subdivision discloses a substantial likelihood*  
22 *that the defendant will regain mental competence in the*  
23 *foreseeable future, the defendant shall remain in the state*  
24 *hospital or other treatment facility or on outpatient status.*

25 (4) *Thereafter, at six month intervals, unless the defendant*  
26 *regains mental competence, the medical director of the inpatient*  
27 *treatment facility or the outpatient treatment staff shall submit a*  
28 *report to the court and the community program director for the*  
29 *county or region of commitment, or a designee, concerning the*  
30 *defendant's progress toward recovery of mental competence. The*  
31 *court shall serve copies of these reports on the prosecutor and*  
32 *defense counsel.*

33 (A) *The defendant shall remain in the state hospital or other*  
34 *treatment facility or on outpatient status, if, upon receipt and*  
35 *review of the report, the court finds all of the following:*

36 (i) *The report discloses a substantial likelihood that the*  
37 *defendant will regain mental competence in the foreseeable*  
38 *future.*

1 (ii) *The report discloses that substantial, identified progress*  
2 *has been made toward competence since the last report was*  
3 *issued.*

4 (iii) *The nature of the offense charged, the likely penalty or*  
5 *range of punishment for the charged offense, and the length of*  
6 *time the defendant has already been confined weigh in favor of a*  
7 *continued commitment.*

8 (B) *The defendant shall be returned to the committing court if*  
9 *the court finds, upon receipt and review of the report, that the*  
10 *state has had a reasonable amount of time to determine whether*  
11 *the defendant will ever regain mental competence based on*  
12 *consideration of all of the following:*

13 (i) *the amount of time the defendant has already been*  
14 *committed,*

15 (ii) *progress made toward competence,*

16 (iii) *the nature of the offense charged, and*

17 (iv) *the likely penalty or range of punishment for the charged*  
18 *offense.*

19 ~~(2) Any defendant who has been committed or has been on~~  
20 ~~outpatient status for 18 months and is still hospitalized or on~~  
21 ~~outpatient status shall be returned to the committing court where~~  
22 ~~a hearing shall be held pursuant to the procedures set forth in~~  
23 ~~Section 1369. The court shall transmit a copy of its order to the~~  
24 ~~community program director or a designee.~~

25 ~~(3)~~

26 (5) *If it is determined by the court that no treatment for the*  
27 *defendant's mental impairment is being conducted, the defendant*  
28 *shall be returned to the committing court. The court shall*  
29 *transmit a copy of its order to the community program director or*  
30 *a designee.*

31 ~~(4)~~

32 (6) *At each review by the court specified in this subdivision,*  
33 *the court shall determine if the security level of housing and*  
34 *treatment is appropriate and may make an order in accordance*  
35 *with its determination.*

36 ~~(e) (1) At the end of three years from the date of commitment~~  
37 ~~or a period of commitment equal to the maximum term of~~  
38 ~~imprisonment provided by law for the most serious offense~~  
39 ~~charged in the information, indictment, or misdemeanor~~  
40 ~~complaint, whichever is shorter, a defendant who has not~~

1 recovered mental competence shall be returned to the committing  
2 court. The court shall notify the community program director or  
3 a designee of the return and of any resulting court orders.

4 (2)

5 (c) (1) Whenever any defendant is returned to the court  
6 pursuant to ~~paragraph (1) or (2) of subdivision (b) or paragraph~~  
7 ~~(1) of this subdivision~~ and it appears to the court that the  
8 defendant is gravely disabled, as defined in subparagraph (B) of  
9 paragraph (1) of subdivision (h) of Section 5008 of the Welfare  
10 and Institutions Code, the court shall order the conservatorship  
11 investigator of the county of commitment of the defendant to  
12 initiate conservatorship proceedings for the defendant pursuant to  
13 Chapter 3 (commencing with Section 5350) of Part 1 of Division  
14 5 of the Welfare and Institutions Code. Any hearings required in  
15 the conservatorship proceedings shall be held in the superior  
16 court in the county that ordered the commitment. The court shall  
17 transmit a copy of the order directing initiation of  
18 conservatorship proceedings to the community program director  
19 or a designee and shall notify the community program director or  
20 a designee of the outcome of the proceedings.

21 ~~(3) Where the defendant is confined in a treatment facility, a~~  
22 ~~copy of any report to the committing court regarding the~~  
23 ~~defendant's progress toward recovery of mental competence shall~~  
24 ~~be provided by the committing court to the prosecutor and to the~~  
25 ~~defense counsel.~~

26 (d)

27 (2) The criminal action remains subject to dismissal pursuant  
28 to Section 1385. If the criminal action is dismissed, the court  
29 shall transmit a copy of the order of dismissal to the community  
30 program director or a designee.

31 (e)

32 (3) If the criminal charge against the defendant is dismissed,  
33 the defendant shall be released from any commitment ordered  
34 under this section, but without prejudice to the initiation of any  
35 proceedings that may be appropriate under the  
36 Lanterman-Petris-Short Act, Part 1 (commencing with Section  
37 5000) of Division 5 of the Welfare and Institutions Code.

38 (f)

39 (d) As used in this chapter, "community program director"  
40 means the person, agency, or entity designated by the State

1 Department of Mental Health pursuant to Section 1605 of this  
2 code and Section 4360 of the Welfare and Institutions Code.  
3 ~~(g)~~  
4 (e) For the purpose of this section, “secure treatment facility”  
5 shall not include, except for state mental hospitals, state  
6 developmental centers, and correctional treatment facilities, any  
7 facility licensed pursuant to Chapter 2 (commencing with Section  
8 1250) of, Chapter 3 (commencing with Section 1500) of, or  
9 Chapter 3.2 (commencing with Section 1569) of, Division 2 of  
10 the Health and Safety Code, or any community board and care  
11 facility.

O